

FILED
LOS ANGELES SUPERIOR COURT

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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 SAM LUTFI,

13 Plaintiff,

14 vs.

15 LYNNE IRENE SPEARS, JAMES
16 PARNELL SPEARS, BRITNEY JEAN
17 SPEARS, and DOES 1 through 25,
18 inclusive.

19 Defendants.

CASE NO.: BC406904

Lynne Spears' Motion in Limine #2

**DEFENDANT LYNNE SPEARS'
RESPONSE TO PLAINTIFF SAM
LUTFI'S SUPPLEMENTAL BRIEF
ON PLEADING OF LIBELOUS
MATTER, IN SUPPORT OF
MOTION IN LIMINE # 2 TO
PRECLUDE & EXCLUDE
EVIDENCE AND TESTIMONY OF
ALLEGED DEFAMATORY
STATEMENTS EXCEPT THOSE
IDENTIFIED IN PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Trial

Date: 10/10/2012

Time: 10:00 a.m.

Place: Dept. 71

Action Commenced: 2/3/2009
Final Status Conference: 9/25/2012
Jury Trial Date: 10/1/2012

1 **DEFENDANT LYNNE SPEARS' RESPONSE TO PLAINTIFF'S**
2 **SUPPLEMENTAL BRIEF ON PLEADING LIBELOUS MATTER**

3
4 Plaintiff Sam Lutfi ("Lutfi") has filed a Supplement Brief on Pleading of
5 Libelous Matter ("Supp. Brief ") in further opposition to Defendant Lynne Spears
6 ("Lynne")'s Motion in Limine #2. In response to Lynne's Motion in Limine #2, the
7 Court has indicated that Plaintiff is bound by the **Previously Identified Alleged**
8 **Defamatory Statements** set forth in the First Amended Complaint ("FAC"), but gave
9 Plaintiff leave to file additional briefing to support Plaintiff's position that it can
10 proceed to trial on the vastly expanded list of **Thirty-Four (34) Alleged Defamatory**
11 **Statements**, which Plaintiff first identified in his [Proposed] Jury Instructions, about
12 two-weeks ago.

13 **1. Lutfi Is Limited to the Previously Identified Alleged Defamatory**
14 **Statements Set Forth in the FAC.**

15
16 Lutfi's Supp. Brief totally ignores the controlling legal authority in this
17 situation. Under California law, "the words constituting an alleged libel must be
18 specifically identified, if not pleaded verbatim, in the complaint." *Gilbert v. Sykes*,
19 147 Cal.App.4th 13, 34 (2007). Allegations which do not identify the substance of
20 what was said or written are insufficient. *See Silicon Knights, Inc. v. Crystal*
21 *Dynamics, Inc.*, 983 F.Supp. 1303, 1314 (N.D.Cal.199); *Jacobson v Schwarzenegger*,
22 357 F.Supp.2d 1198, 1216 (C.D.Cal.2004).

23 Plaintiff does not address, let alone distinguish the *Gilbert*, *Silicon Knights* or
24 *Jacobson* decisions. Instead, Plaintiff cites a truncated excerpt from Witkin. The
25 excerpt actually supports Lynne's position, not Plaintiff's. It say that "the complaint
26 should set the [alleged defamatory] matter out verbatim, either in the body or as an
27 attachment." 5 Witkin, California Procedure (5th ed., 2008), *Pleading*, § 739. In other
28

1 words, the alleged defamatory matter should be set out either verbatim in the body or
2 verbatim in an attachment.

3 Nothing cited by Plaintiff or in Witkin or in the cases cited therein or in any
4 case Lynne has found would allow a plaintiff to attach a 20-page excerpt from a book
5 and on the eve of trial claim, as Plaintiff does here, that “[a]ll three chapters are about
6 Plaintiff and they are riddled with one false statement after another,” *Supp. Brief 1:18-*
7 *21*, leaving it up the defendant to figure out what Plaintiff is alleging is false and
8 defamatory.

9 Lutfi persists in making the astounding argument that despite the fact that the
10 FAC specifically quoted only the **Previously Identified Alleged Defamatory**
11 **Statements**, Lynne should have gone through the three (3) entire chapters attached to
12 the FAC, amounting to twenty (20) pages, to “ascertain which statements are false.”
13 But Lutfi has it backwards. Under California law, it is the obligation of the Plaintiff,
14 not the Defendant, to “specifically identify” the alleged libels. *Gilbert v. Sykes*, *supra*;
15 *Silicon Knights, Inc. v. Crystal Dynamics, Inc.* *supra*, *Jacobson v Schwarzenegger*,
16 *supra*. This is fundamental since it is Lutfi’s burden to prove falsity by clear and
17 convincing evidence.

18 Lutfi argues that Lynne “had three and a half years to investigate and conduct
19 discovery to prepare for trial.” *Supp. Brief 1:22-23*. Yet, Lutfi totally ignores that fact
20 that Lynne’s counsel did indeed question Lutfi at his deposition on the **Previously**
21 **Identified Alleged Defamatory Statements**, because those were the only alleged
22 defamatory statements he had identified in the FAC, as required by California law.
23 *See Reply Declaration of Stephen F. Rohde*, ¶2 and that Lynne also propounded a set
24 of Requests for Admission and Form Interrogatories, to which Luti responded on
25 February 14, 2011, in which she specifically questioned Lutfi only about the
26 **Previously Identified Alleged Defamatory Statements**, because again those were
27
28

1 the only alleged defamatory statements he had identified in the FAC, as required by
2 California law. *See Reply Declaration of Stephen F. Rohde*, ¶2.

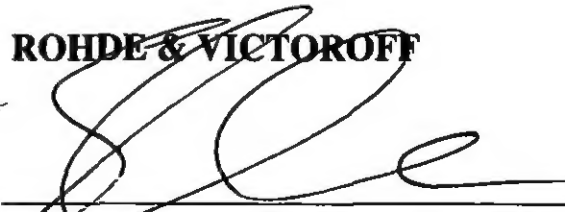
3 Lutfi's Supp. Brief does not deny that throughout the 3 ½ years of this
4 litigation, including all motion practice, an anti-SLAPP Motion, an appeal to the Court
5 of Appeal on the anti-SLAPP motion, all discovery, including an extensive deposition
6 of Lutfi, and Plaintiff's draft Jury Instructions submitted in December, 2011 in
7 advance of the initial Trial date last January, the only libelous or defamatory
8 statements alleges by Plaintiff were the **Previously Identified Alleged Defamatory**
9 **Statements** listed above.

10 Lutfi likewise is oblivious of the fact that his scattergun approach would violate
11 Lynne's right to Due Process and Fair Notice, especially in light of the fact that since
12 Plaintiff is a limited public figure, this case is subject to all of the protections of the
13 First Amendment, at the core of which is the fundamental constitutional right to be on
14 notice of each and every alleged defamatory statement and to have a full and fair
15 opportunity to prepare a complete defense to each and every alleged defamatory
16 statement. *New York Times Co. v. Sullivan*, 376 U.S. 254, 285-6 (1964).

17 For each of these reasons, the Court should reiterate its ruling and enter an
18 Order prohibiting Plaintiff and Plaintiff's counsel from referring to, questioning about,
19 commenting upon, attempting to suggest or attempting to introduce testimony or
20 evidence concerning any alleged defamatory statements as a basis for the First,
21 Second and Fourth Causes of Action, except **Previously Identified Alleged**
22 **Defamatory Statements.**

23 Dated: October 9, 2012

ROHDE & VICTOROFF


26
27 **STEPHEN F. ROHDE**
28 Attorneys for Defendant LYNNE
SPEARS

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA)
4) ss.
5 COUNTY OF LOS ANGELES)

6 I am employed in the County of Los Angeles, State of California. I am over the age of 18
7 and not a party to the within action; my business address is 1880 Century Park East, Suite 411,
8 Los Angeles, California 90067. On October 9, 2012, I served the foregoing document(s) described
9 as

10 **DEFENDANT LYNNE SPEARS' RESPONSE TO PLAINTIFF SAM LUTFI'S SUPPLEMENTAL BRIEF
11 ON PLEADING OF LIBELOUS MATTER, IN SUPPORT OF MOTION IN LIMINE # 2 TO PRECLUDE &
12 EXCLUDE EVIDENCE AND TESTIMONY OF ALLEGED DEFAMATORY STATEMENTS EXCEPT
13 THOSE IDENTIFIED IN PLAINTIFF'S FIRST AMENDED COMPLAINT**

14 on the interested parties in this action by placing true copies thereof in sealed envelopes addressed
15 as follows:

16 Joel E. Boxer
17 Bird, Marella, Boxer, Wolpert, Nessim, Drooks & Lincenberg, PC.
18 1875 Century Park East, 23rd Floor
19 Los Angeles, California 90067-2561

20 Leon J. Gladstone
21 Michael J. Aiken
22 Gladstone Michel Weisberg Willner & Slaoane, ALC
23 4551 Glencoe Ave., Suite 300
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25 Joseph D. Schleimer
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27 Beverly Hills, CA 90212

28 ☐ BY U.S. MAIL: I deposited such envelope at a U.S. Mailbox at Los Angeles, California.
The envelope was mailed with postage thereon fully prepaid.

☐ BY PERSONAL SERVICE: I delivered such envelope by hand to the addresses or the
offices of the addressee.

23 ☒ BY ELECTRONIC MAIL; I personally sent the documents via Electronic Mail to the
24 addressee(s) above.

☐ BY FED EX: I caused the document(s) to be deposit with Federal Express fully prepaid.

26 I declare under penalty of perjury under the laws of the State of California that the above is
27 true and correct.

28 Executed on October 9, 2012 at Los Angeles, California.


Stephen F. Rohde